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Our File No.: 115822

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

Matthew Muldowney, individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

American Coradius International, LLC,

Defendant.

Docket No: 5:19-CV-422[TJM/TWD]

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Matthew Muldowney, individually and on behalf of all others similarly situated (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against American Coradius International, LLC (hereinafter referred to as “*Defendant*”), as follows:

**INTRODUCTION**

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the “FDCPA”).

**JURISDICTION AND VENUE**

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).



3. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

### **PARTIES**

5. Plaintiff Matthew Muldowney is an individual who is a citizen of the State of New York residing in Onondaga County, New York.

6. Plaintiff is a natural person allegedly obligated to pay a debt.

7. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant American Coradius International, LLC, is a New York Limited Liability Company with a principal place of business in Erie County, New York.

9. Defendant regularly collects or attempts to collect debts asserted to be owed to others.

10. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

11. The principal purpose of Defendant's business is the collection of such debts.

12. Defendant uses the mails in its debt collection business.

13. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

### **THE FDCPA**

14. Congress enacted the FDCPA upon finding that debt collection abuse by third party debt collectors was a widespread and serious national problem. *See* S. Rep. No. 95-382, at 2 (1977), *reprinted in* U.S.C.C.A.N. 1695, 1696; 15 U.S.C § 1692(a).

15. The purpose of the FDCPA is to protect consumers from deceptive or harassing actions taken by debt collectors, with the aim of limiting the suffering and anguish often inflicted by independent debt collectors. *Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996).

16. To further these ends, the FDCPA “establishes certain rights for consumers whose debts are placed in the hands of professional debt collectors for collection.” *Vincent v. The*

*Money Store*, 736 F.3d 88, 96 (2d Cir. 2013).

17. In order for consumers to vindicate their rights under the statute, the FDCPA “grants a private right of action to a consumer who receives a communication that violates the Act.” *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 91 (2d Cir. 2008).

18. Thus, “the FDCPA enlists the efforts of sophisticated consumers ... as 'private attorneys general' to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson*, 516 F.3d at 91.

19. To this end, in determining whether a collection letter violates the FDCPA, courts in the Second Circuit utilize “the least sophisticated consumer” standard. *Jacobson*, 516 F.3d at 90. “The test is how the least sophisticated consumer—one not having the astuteness of a 'Philadelphia lawyer' or even the sophistication of the average, everyday, common consumer—understands the notice he or she receives. *Russell*, 74 F.3d at 34.

20. The least sophisticated consumer standard pays no attention to the circumstances of the particular debtor in question. *See Easterling v. Collecto, Inc.*, 692 F.3d 229, 234 (2d Cir. 2012). Specifically, it is not necessary for a consumer to show that he or she was confused by the communication received. *See Jacobson*, 516 F.3d at 91. Likewise, the consumer's actions in response to a collection letter are not determinative of the question of whether there has been a violation of the FDCPA. *Thomas v. Am. Serv. Fin. Corp.*, 966 F. Supp. 2d 82, 90 (E.D.N.Y. 2013).

21. Under the least sophisticated consumer standard, collection letters violate the FDCPA “if they are open to more than one reasonable interpretation, at least one of which is inaccurate.” *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993).

22. Moreover, a debt collector violates the FDCPA if its collection letter is “reasonably susceptible to an inaccurate reading” by the least sophisticated consumer. *DeSantis v. Computer Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001).

23. Similarly, a collection letter violates the FDCPA “if it would make the least sophisticated consumer uncertain as to her rights.” *Jacobson*, 516 F.3d at 90.

24. To recover damages under the FDCPA, a consumer does not need to show intentional conduct on the part of the debt collector. *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010). Rather, “[t]he FDCPA is a strict liability statute, and the degree of a

defendant's culpability may only be considered in computing damages.” *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 63 (2d Cir. 1993). A single violation of the FDCPA to establish civil liability against the debt collector. *Id.*

### **ALLEGATIONS**

25. Defendant alleges Plaintiff owes a debt (“the alleged Debt”).

26. The alleged Debt is an alleged obligation of Plaintiff to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

27. The alleged Debt does not arise from any business enterprise of Plaintiff.

28. The alleged Debt is a “debt” as defined by 15 U.S.C. § 1692a(5).

29. At an exact time known only to Defendant, the alleged Debt was assigned or otherwise transferred to Defendant for collection.

30. At the time the alleged Debt was assigned or otherwise transferred to Defendant for collection, the alleged Debt was in default.

31. In its efforts to collect the alleged Debt, Defendant contacted Plaintiff by letter (“the Letter”) dated April 17, 2018. (A true and accurate copy is annexed hereto as “**Exhibit 1.**”)

32. The Letter conveyed information regarding the alleged Debt.

33. The Letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

34. The Letter was the initial written communication Plaintiff received from Defendant concerning the alleged Debt.

### **FIRST COUNT**

#### **Violations of 15 U.S.C. §§ 1692g(b), 1692e and 1692e(10)**

35. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

36. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

37. 15 U.S.C. § 1692g(a)(1) provides that the written notice must contain the amount of the debt.

38. 15 U.S.C. § 1692g(a)(2) provides that the written notice must contain the name of the creditor to whom the debt is owed.

39. 15 U.S.C. § 1692g(a)(3) provides that the written notice must contain a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.

40. 15 U.S.C. § 1692g(a)(4) provides that the written notice must contain a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector

41. 15 U.S.C. § 1692g(a)(5) provides that the written notice must contain a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

42. A debt collector has the obligation, not just to convey the required information, but also to convey such clearly.

43. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed or contradicted by other language in the communication.

44. Even if a debt collector conveys the required information accurately, the debt collector nonetheless violates the FDCPA if that information is overshadowed by other collection activities during the 30-day validation period following the communication.

45. 15 U.S.C. § 1692g(b) provides that collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

46. A collection activity or communication overshadows or contradicts the validation notice if it would make the least sophisticated consumer uncertain or confused as to her rights.

47. The Letter sets forth, "**NOTICE: PLEASE SEE SECOND PAGE FOR IMPORTANT INFORMATION**" in bold typeface.

48. The Letter sets forth, "**NOTICE: PLEASE SEE SECOND PAGE FOR IMPORTANT INFORMATION**" in larger type-face than the rest of the writing on the Letter.

49. The Letter sets forth, “**NOTICE: PLEASE SEE SECOND PAGE FOR IMPORTANT INFORMATION**” in an emphasized manner.

50. However, the second page of the Letter does not include Plaintiff’s Section 1692g rights.

51. Instead, Defendant placed the required validation notice in the body of the Letter, in the same font, font size, and typeface as the rest of body.

52. The Letter sets forth the required validation notice in a deemphasized manner.

53. The Letter sets forth the required validation notice in a deemphasized manner especially in relation to the “**NOTICE: PLEASE SEE SECOND PAGE FOR IMPORTANT INFORMATION.**”

54. The required validation notice, relative to other language in the Letter, is visually inconspicuous.

55. The required validation notice cannot be readily discerned from the rest of the language in the Letter.

56. The Letter contains no visually conspicuous transitional language, such as “See Important Notice Below,” directing Plaintiff’s attention to the required validation notice.

57. The Letter does not otherwise direct the consumer’s attention to the required validation notice in any way.

58. Rather, the Letter directs the consumer’s attention to “**NOTICE: PLEASE SEE SECOND PAGE FOR IMPORTANT INFORMATION.**”

59. The manner in which the Letter is formatted would likely make the least sophisticated consumer uncertain as to her rights.

60. The manner in which the Letter is formatted would likely make the least sophisticated consumer confused as to her rights.

61. The manner in which the Letter is formatted would likely make the least sophisticated consumer overlook her rights.

62. The letter is structured in such a way that it makes Plaintiff’s validation rights difficult to read and easy to overlook.

63. The letter is structured in such a way that it makes Plaintiff’s validation rights appear as boilerplate language.

64. The letter is structured in such a way that it makes Plaintiff's validation rights appear unimportant.

65. The letter is structured in such a way that it discourages Plaintiff from reading her validation rights.

66. As a result of the foregoing, the Letter would likely discourage the least sophisticated consumer from exercising her right to dispute the alleged Debt.

67. As a result of the foregoing, the Letter would likely discourage the least sophisticated consumer from exercising her right to request validation of the alleged Debt.

68. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter overshadows the disclosure of the consumer's right to dispute the alleged Debt.

69. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter overshadows the disclosure of the consumer's right to request validation of the alleged Debt.

70. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter overshadows the disclosure of the consumer's right to request the name and address of the original creditor.

71. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter is inconsistent with the disclosure of the consumer's right to dispute the alleged Debt.

72. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter is inconsistent with the disclosure of the consumer's right to request validation of the alleged Debt.

73. Defendant violated 15 U.S.C. § 1692g(b) as the format and structure of the Letter is inconsistent with the disclosure of the consumer's right to request the name and address of the original creditor.

74. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

75. 15 U.S.C. § 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.

76. A debt collection practice can be a "false, deceptive, or misleading" practice in violation of 15 U.S.C. § 1692e even if it does not fall within any of the subsections of 15 U.S.C. § 1692e. *Clomon*, 988 F.2d at 1318.

77. A collection letter violates 15 U.S.C. § 1692e if, in the eyes of the least sophisticated consumer, it is open to more than one reasonable interpretation, at least one of which is inaccurate. *Clomon*, 988 F.2d at 1319.

78. A collection letter also violates 15 U.S.C. § 1692e if it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer. *DeSantis*, 269 F.3d at 161.

79. Because the Letter is open to more than one reasonable interpretation it violates 15 U.S.C. § 1692e.

80. Because the Letter is reasonably susceptible to an inaccurate reading by the least sophisticated consumer it violates 15 U.S.C. § 1692e.

81. For the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692g(b), 1692e and 1692e(10) and is liable to Plaintiff therefor.

**SECOND COUNT**  
**Violation of 15 U.S.C. § 1692g**  
**Validation of Debts**

82. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

83. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information.

84. One such requirement is that the debt collector provide “the name of the creditor to whom the debt is owed.” 15 U.S.C. § 1692g(a)(2).

85. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to convey such clearly.

86. A debt collector has the obligation not just to convey the name of the creditor to whom the debt is owed, but also to state such explicitly.

87. Merely naming the creditor without specifically identifying the entity as the current creditor to whom the debt is owed is not sufficient to comply with 15 U.S.C. § 1692g(a)(2).

88. Even if a debt collector conveys the required information, the debt collector



nonetheless violates the FDCPA if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty.

89. When determining whether the name of the creditor to whom the debt is owed has been conveyed clearly, an objective standard, measured by how the “least sophisticated consumer” would interpret the notice, is applied.

90. The Letter fails to identify by name and label any entity as “current creditor,” “account owner,” or “creditor to whom the debt is owed.”

91. Instead, the Letter sets forth three disparate entities: “Comenity Capital Bank”; “Pay Pal Credit”; and “Bill Me Later, Inc.”

92. The Letter states, “This account has been placed with our office for collection.”

93. The Letter fails to indicate who placed the account with Defendant.

94. The Letter fails to indicate who Defendant represents.

95. The Letter fails to indicate who is Defendant's client.

96. The Letter demands payment be made to Defendant.

97. The least sophisticated consumer would likely be confused as to whether the creditor to whom the debt is owed is “Comenity Capital Bank,” “Pay Pal Credit,” “Bill Me Later, Inc.,” or Defendant.

98. The least sophisticated consumer would likely be uncertain as to whether the creditor to whom the debt is owed is “Comenity Capital Bank,” “Pay Pal Credit,” “Bill Me Later, Inc.,” or Defendant.

99. Defendant failed to explicitly state the name of the creditor to whom the debt is owed.

100. Defendant failed to clearly state the name of the creditor to whom the debt is owed.

101. The least sophisticated consumer would likely be confused as to the name of the creditor to whom the debt is owed.

102. The least sophisticated consumer would likely be uncertain as to the name of the creditor to whom the debt is owed.

103. Defendant violated § 1692g as it failed to clearly and explicitly convey the name of the creditor to whom the debt is owed.

**THIRD COUNT**  
**Violation of 15 U.S.C. § 1692e**  
**False or Misleading Representations as to the Name of**  
**the Creditor to Whom the Debt is Owed**

104. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

105. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

106. While § 1692e specifically prohibits certain practices, the list is non-exhaustive, and does not preclude a claim of falsity or deception based on any non-enumerated practice.

107. The question of whether a collection letter is deceptive is determined from the perspective of the “least sophisticated consumer.”

108. A collection letter is deceptive under 15 U.S.C. § 1692e if it can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate.

109. A collection letter is also deceptive under 15 U.S.C. § 1692e if it is reasonably susceptible to an inaccurate reading by the least sophisticated consumer.

110. For purposes of 15 U.S.C. § 1692e, the failure to clearly and accurately identify the creditor to whom the debt is owed is unfair and deceptive to the least sophisticated consumer.

111. The identity of creditor to whom the debt is owed is a material piece of information to a consumer.

112. Knowing the identity of creditor to whom the debt is owed affects how a consumer responds to a debt collector's attempts to collect the debt.

113. Because the Letter can reasonably be read by the least sophisticated consumer to have two or more meanings, one of which is inaccurate, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

114. Because the Letter is reasonably susceptible to an inaccurate reading by the least sophisticated consumer, as described, it is deceptive within the meaning of 15 U.S.C. § 1692e.

115. The least sophisticated consumer would likely be deceived by the Letter.

116. The least sophisticated consumer would likely be deceived in a material way by the Letter.

117. Defendant violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

**CLASS ALLEGATIONS**

118. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York.

119. Plaintiff seeks to certify a class of:

- i. All consumers to whom Defendant sent a collection letter substantially and materially similar to the letter sent to Plaintiff, which letter was sent on or after a date one year prior to the filing of this action to the present.

120. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

121. The Class consists of more than thirty-five persons.

122. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this action affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

123. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

124. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class is not extraordinarily difficult, and the factual and legal issues raised by this action will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

**JURY DEMAND**

125. Plaintiff hereby demands a trial of this action by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment be entered:

- a. Certifying this action as a class action; and
- b. Appointing Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel;
- c. Finding Defendant's actions violate the FDCPA; and
- d. Granting damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Granting Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Granting Plaintiff's costs; all together with
- g. Such other relief that the Court determines is just and proper.

DATED: April 8, 2019

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